

Business Visitor Status-What Every International Organization Needs To Know

Kelly McDermott

In recent news, the Conservative Government has expanded its efforts to crackdown on individuals who are abusing Canada's immigration system. For Canadian companies that are affiliated to or do business with a company or companies located in another country, this political change means that travelling to and from Canada for business is going to be more difficult for your employees.

If you are one of these Canadian organizations, you are probably very familiar with the concept of "business visitor" status under the *Immigration and Refugee Protection Act* and its Regulations ("IRP"), the *North American Free Trade Agreement* ("NAFTA") and other international trade agreements, such as the *Canada Chile Free Trade Agreement* ("CCFTA").

If a foreign national worker is deemed a "business visitor" under the IRP, NAFTA, or CCFTA, organizations do not have to obtain a work permit. Unlike work permits, there is no pre-approval process required to obtain business visitor status. This determination will take place at the port of entry. However, workers from certain designated countries will require temporary resident visas before entering Canada as a business visitor.¹ Where required, these applications should be made in advance of the worker's visit.

To take advantage of the business visitor status and avoid problems at the border, organizations need to ensure that they: 1) understand which workers fall within this definition; and 2) have adequately prepared these workers for border crossings.

Business Visitor Defined

To fall within the definition of "business visitor", a foreign national worker must be engaging in international business activities in Canada without directly entering into the Canadian labour market.

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To establish this requirement, organizations must show:

1. The worker is engaging in business that is international in scope. In other words, there is an underlying cross-border activity;
2. The worker is not entering into the Canadian labour market e.g. the worker cannot actively manage a Canadian operation or engage in hands-on production of goods or performance of services in Canada;
3. The worker intends to stay in Canada less than 6 months;
4. The worker's primary source of remuneration comes from outside of Canada;
5. The worker's principal place of business is outside of Canada; and
6. The profits from the worker's business activity accrue outside of Canada.

To further assist organizations in determining whether the business visitor status applies, organizations should consult a variety of resources, including: 1) applicable legislation and/or international agreements, *i.e.* IRP, NAFTA, or CCFTA; 2) the Foreign Worker Manual; and 3) government websites. These resources provide specific examples of activities that are deemed permissible for a business visitor. If a business activity is not covered by one of these specific examples, it is prudent to seek legal advice to ensure you are not misrepresenting a foreign national worker's status. A misrepresentation of material facts could subject the worker and organization/s to significant sanctions.

Prepare for Border Crossing

Immigration officers have a great deal of discretion in making status determinations. As such, organizations should equip workers seeking to enter Canada as a business visitor with tools to help facilitate their entry. In addition to the normal travel documents required of the workerⁱⁱ, foreign national workers should be equipped with:

1. Any relevant contracts or bills to support the worker's visit e.g. service contract;
2. A letter of invitation from the Canadian organization. This letter should provide information about the worker being invited and the person and organization extending the invitation. This should include a description of the purpose for the worker's visit (if possible, you should specifically cite the eligibility criteria and the permitted activity under IRP, NAFTA or CCFTA and/or the Foreign Workers Manual), the duration of the visit and accommodation and living expenses, if any, being provided to the worker by the Canadian organization; and

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3. A letter of support from the worker's foreign employer which evidences that the business activity in Canada is international in scope and the worker will not be entering the Canadian labour market i.e. their primary remuneration and principal place of business remains outside of Canada and the profits, if any, from the business activity will accrue outside of Canada.

For guidance through this process and to ensure that your organization is legally compliant, we would be happy to provide you with assistance.

For more information, please contact:

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ⁱ Refer to the Citizenship and Immigration Canada's website for a list of designated countries.

ⁱⁱ Passport/travel documents, temporary resident visa, where applicable, 24 hour contact information of the worker's business host, and proof that the worker has money to stay in Canada and return home.